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Supreme Court, U.S.
FILED
MAR 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1357

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

Thomas R. Angel and Loretta C. Angel,

Appellants,

vs.

Judges Charles W. Froehlich, Jr., F.V. Lopardo, Gilbert Nares and Don Martinson,

Appellees.

REPLY BRIEF - Opposition to Motion to Dismiss or Affirm

On Appeal from the United States Court of Appeals Ninth Circuit

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IN THE SUPREME COURT OF THE UNITED STATES

CASE NUMBER 87-1357

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APPEALS COURT NO. 87-5965

DISTRICT COURT NO. 86-2270-S(CM)

I, Angela Hankins declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am Residing in the County of San Diego, California, within which county the subject mailing occurred. My Residence address is 2055 Village Park Way Apt. #112 Encinitas, Ca. 92024. I served the within

[REPLY BRIEF - Opposition to Motion to Dismiss or Affirm]: An original and 40 copies on the United States Supreme Court as follows: Clerk, U.S. Supreme Court, Washington, D.C. 20543

of which true and correct copies of the document filed in the cause is affixed by placing three copies thereof in a separate envelope for each addressese named hereafter, addressed to each such addressee respectively as follows:

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I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at Encinitas, California, on March 22, 1988.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 22, 1988

Angela Hankins

TABLE of CONTENTS

	Page
TABLE of AUTHORITIES	ii
OPINIONS BELOW	1
PROVISIONS INVOLVED	1
ISSUES PRESENTED	1
STATEMENT OF THE CASE	1
ARGUMENT	2
I JUDGMENT and RECORD ARE MISREPRESENTED IN JUDGES' MOTION	2
II ABSTENTION PRINCIPLES of YOUNGER v HARRIS DO NOT APPLY TO BAR ANGELS' ACTION	3
III INJUNCTION HEREIN WOULD BE EFFECTIVE	7
IV JUDICIAL IMMUNITY DOES NOT APPLY TO ILLEGAL ACTS	8
CONCLUSION	10

TABLE of AUTHORITIES

Page

CALIFORNIA RULES OF COURT

_Rule 8(b) ..... 3,4&5

CASE LAW

Bradley v Fisher
(1872) 13 Wall 335 9

Cleavinger v Saxner
(1985) 474 U.S. 199 9

Forrester v White
(1988) No 86-761,
48 S. Ct. Bull (CCH) B411 8

Huffman v Pursue, Ltd.
(1975) 420 U.S. 605 5

Mitchum v Foster
(1972) 407 U.S. 239 5

Pierson v Ray
(1967) 386 U.S. 548 9

Stump v Sparkman
(1978) 435 U.S. 350 9

Terrace v Thompson
263 U.S. 197, 214 4

United States v St. Bernard Parish
(5th Cir. 1985) 756 F.2d 1123 7

Watson v Buck
(1941) 313 U.S. 402 4

Younger v Harris
(1971) 401 U.S. 41, 53, 59 4

OPPOSITION to MOTION to DISMISS or AFFIRM

Appellants, Thomas R. Angel and Loretta C. Angel (hereinafter Angels), oppose Appellees (hereinafter Judges) motion to dismiss or affirm on the grounds that the appeal does present a substantial federal question, that no other forum exist for a fair and impartial hearing on such question, and on the grounds that Judgment and record are misrepresented.

OPINIONS BELOW

The opinions below are included herein by reference as set forth in Angels Jurisdictional Statement.

PROVISIONS INVOLVED

Provisions involved are included herein by reference as set forth in Angels Jurisdictional Statement.

ISSUES PRESENTED

Issues presented are included herein by reference as set forth in Angels Jurisdictional Statement.

STATEMENT OF THE CASE

Statement of the case is included herein by reference as set forth in Angels

Jurisdictional Statement.

ARGUMENT

(Argument is included herein by reference as set forth in Angels Jurisdictional Statement)

I

JUDGMENT and RECORD ARE MISREPRESENTED in JUDGES' MOTION

Judgment by the Ninth Circuit does not state that "any federal question sought to be reviewed was not timely and properly raised", nor in fact have the Judges set forth such grounds prior to the instant motion, and thereto is not properly before this court.

Judges assert, "Appellants make no reference to the case or proceeding which Judge Nares heard." (Motion p.4) The case and proceeding heard by Judge Nares is specificially set forth in Angels complaint as state case N14705 and involved Motions by defendant to Set Aside Default, Post Security and Expunge Lis Pendens. (Complaint p.3, lines 5 thru 16 via Exhibit IV)

Such Complaint and record were before both the District Trial Court and the Ninth Circuit Court of Appeals.

The hearing on Statement of Disqualification of Judge Froehlich before Judge F. V. Lopardo was as to both State Case N8598 and N14705. (Complaint, Exhibit III)

Judges assert, "As appellants' "statement of the case" reflects, Appellants did not exhaust their state remedies of appeal to the California Court of Appeal and the California Supreme Court." (Motion p.8) Such assertion is false.

II

ABSTENTION PRINCIPLES OF YOUNGER v HARRIS DO NOT APPLY TO BAR ANGELS' ACTION

In accordance with Younger v Harris (1971) 401 U.S. 41:

> "We express no view about the circumstances under which federal courts may act when there is no prosecution pending in state courts at the time the federal proceeding is begun."

As set forth to the courts below, at the time of filing complaint herein, Angels were and are impaled upon final State Court Judgments. Angels cases are not pending.

California Rules of Court, Rule 8(b) specifically sets forth the procedure for hearing and determination by the trial judge.

Rule 8(b) relates to the record on appeal, but applies in its application to the trial court. The result of such procedure is the record on appeal, and that is what makes this procedure of paramount importance.

In Younger v Harris at p.53, the court quotes Watson v Buck, 313 U.S. 402 (1941) as follows:

> "It is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it."

California Rules of Court, Rule 8(b) denies even the appearance of a fair hearing and thereto flagrantly and patently violates expressed constitutional prohibitions and effectively eliminates all state civil forums of redress. The potential damage inherent in Rule 8(b) can not be dismissed on the basis of being "merely a rule of procedure." Indeed, it is a rule, and it is applied and therein lies the potential for insurmountable damage.

In Younger v Harris p.59, Justice Butler wrote quoting Terrance v Thompson, 263 U.S. 197, 214 as follows:

"Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essestial in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the state is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a federal court of equity."

Angels have been injured as a result of California Rules of Court, Rule 8(b). Rule 8(b) was indeed applicable to Angels second lawsuit (State Case N14705) as a result of hearings before Judges Gilbert Nares and F. V. Lapordo. Both hearings are documented by way of complaint herein, supra.

In accord with Mitchum v Foster (1972) 407 U.S. 239:

"Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of State law upon rights secured by the Constitution and laws of the Nation."

In accord with Huffman v Pursue, Ltd. (1975) 420 U.S. 605:

"A civil litigant may, of course seek review in this Court of any federal claim properly asserted in and rejected by state courts. More over, where a final decision

> of a state court has sustained the validity of a state statute challenged on federal constitutional grounds, an appeal to this court lies as a matter of right. 28 U.S.C. Section 1257(2)"

Grounds set forth for appeal herein include 28 U.S.C. Section 1257(2). (Jurisdictional Statement)

Angels requested that the courts take Judicial Notice of the complete record in each such case litigated in San Diego North County Superior Court. (Complaint p.4, lines 19-21)

Appeal Courts are not trial courts. How does a litigant establish damage absent even the appearance of a fair hearing? (Jurisdictional Statement) Criminal State prosecution aside, federal forum is the only valid forum for redress as to the Judges actions.

If, in Ninth Circuit decision, the term ostensibly translates to Angels have not exhausted their state appellant remedies (Motion p.11), why does the Ninth Circuit state in decision as follows, "So considered the 'ultimate acts' as alleged by appellant's neither show nor can show 'that the judges'

ultimate actions were not judicial or beyond the scope of the court's jurisdiction ...". Ninth Circuit specificially relates Angels ability to state cause in terms of the ultimate acts of the Judges involved, not in terms of the ultimate acts of the appellate process. Such statement indicates that the appellate process would have vindicated the Judges. In any case, state record establishes that Angels have exhausted all State remedies.

III

INJUNCTION HEREIN WOULD BE EFFECTIVE

In accord with United States v St. Bernard Parish (5th Cir. 1985) 756 F.2d 1123:

> "Requiring a community to do acts which it may voluntarily choose to avoid is not a proper exercise of Judicial Power."

Such case is not applicable to Injunctive relief sought herein. Angels can not voluntarily decide not to pay judgment on verdict in the amount of $154,000. (State case N23298) Angels can not, independent of the court, set aside court judgments which have eliminated hearings via falsification of reporters transcripts. What the Judges herein

did, and specificially Judges Froehlich and Lapordo, they did as the Court and that which the courts do can be undone by Courts. Injunctive relief functions not only to prohibit Acts, but to compel Acts.

Judge Froehlich has functioned as a Judge in North County Superior Court since his resignation. Such function was written up in the local newspaper. Judges herein are 4 out of 8, not 4 out of 52. Judges assert that "Enjoining these Judges would do nothing to halt Judicial Action on the subject civil matters." (Motion p.11) Angels concern is to Halt that action which is not judicial. In accordance with Forrester v White (1988) No. 86-761, 48 S.Ct. Bull. (CCH) B411:

> "To the extent that the threat of liability encourages these officials to carry out their duties in a lawful and appropriate manner, and to pay their victims when they do not, 42 U.S.C. Section 1983 accomplishes exactly what it should."

Judges must know that they will be accountable for illegal acts.

IV

JUDICIAL IMMUNITY DOES NOT APPLY TO ILLEGAL ACTS

In accord with Pierson v Ray (1967) 386 U.S. 548:

> "The settled common-law principle that a Judge is immune from liability for damages for his judicial acts was not abolished by Section 1983."

The complaint herein is not for damages, nor does the complaint involve Judicial Acts. The complaint involves illegal acts, felonies. (Jurisdictional Statement) In accord with Cleavinger v Saxner (1985) 474 U.S. 199:

> "In Bradley v Fisher, 13 Wall. 335 (1872), it ruled that a federal judge may not be held accountable in damages for a Judicial act taken within his Court's Jurisdiction."

Again, the complaint herein is not for damages, nor are the acts complained of judicial, but rather are illegal acts.

In accord with Stumps v Sparkman (1978) 435 U.S. 350:

> "The factors determining whether an act by a judge is 'Judicial' relate to the nature of the act itself (whether it is a function normally performed by a Judge) and the expectation of the parties (whether they dealt with the Judge in his judicial capacity, ..."

Clearly, illegal acts are not judicial acts. Froehlich's decision on Angels first two causes of action in State Case N8598 was a

Judicial Act (regardless of how erroneous). Froehlichs making the terms of settlement in such case without Angels knowledge and after being informed that Angels specificially did not want such settlement was an excess of jurisdiction, but still a judicial act. However, Froehlichs sealing such settlement via orchestration of the falsification of the court reporters transcript was and is an illegal act, a felony under both State and Federal law. (Jurisdictional Statement)

CONCLUSION

For the reasons set forth herein and for those reasons set forth in Angels Jurisdictional Statement, Appellees' motion to dismiss or affirm, should be denied.

Respectfully Submitted,

Thomas R. Angel

Thomas R. Angel
Plaintiff/Appellant pro se

Loretta C. Angel

Loretta C. Angel
Plaintiff/Appellant pro se